

DATE: March 19, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-10506

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Although applicant's intentional falsification of material facts on his SCA occurred five years ago, his failure to offer any independent evidence indicating that he has reformed and is now reliable and trustworthy, precludes a finding that it is now clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On May 7, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on or about June 10, 2002, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about September 4, 2002. Applicant filed a response to the FORM on or about October 29, 2002. The case was assigned to me on October 22, 2002.

FINDINGS OF FACT

Applicant is a 45 year old security guard.

Applicant consumed alcohol, at times to excess and to the point of intoxication, from about 1975 to at least April 2000.

In 1989, applicant and his wife were involved in a domestic dispute that resulted in physical injuries to both of them. Applicant was arrested for Domestic Disturbance and Assault. Although no charges were filed against him, applicant was ordered to reside at the company barracks for 30 days. Applicant admits that alcohol "was a factor in this incident."

At a later date in 1989, applicant attempted suicide after he and his wife were involved in a physical altercation. They both had been drinking at the time of the incident.

In March 1993, applicant was referred to an Army alcohol program after a "drunk and disorderly" incident with military police. Applicant was diagnosed as alcohol dependent and participated in 14 counseling sessions. He denied having an alcohol problem, and was released from the program in March 1994 after making "poor progress."

Applicant received Non-Judicial punishment in 1994 for the offenses of Assault on a Child Under 16 years of Age and Child Mistreatment. These charges were the result of applicant returning home from a party in an intoxicated condition and then "disciplining" his children with a "military canvas belt." Applicant was sentenced to a reduction in rank (suspended) and fined \$750.00 (suspended). He was also required to participate in an outpatient alcohol program, attend anger control and family counseling, and attend any other counseling program deemed necessary. In a signed, sworn statement applicant gave to the Defense Security Service (DSS) in April 2000, he stated the following about his alcohol use: "After the incident with the children, I knew that I had a problem. My commander advised me to get into the assistance program. After the program I quit drinking alcohol for a time. Now the most alcohol I drink is one to two beers in a month. I do not intend to develop an alcohol problem again." There is no evidence that applicant has been involved in any alcohol-related incidents since he left the Army in 1997.

Applicant completed and executed a Security Clearance Application (SCA) in October 1997. The Government alleges that applicant intentionally falsified his responses to a number of the questions on the SCA, specifically questions 19, 24, 25, 26, 30 and 34.

In response to Question 19 which asked: "In the last 7 years, have you consulted a mental health professional (psychiatrist, psychologist, counselor, etc.) or have you consulted with another health care provider about a mental health related condition?" applicant responded "no." Although the counseling applicant received following the 1993 and 1994 incidents could be construed as mental health related, it is not unreasonable for a non-professional to fail to perceive this counseling as "mental health related." I therefore find that applicant did not intentionally falsify his response to Question 19.

Applicant's "no" response to Question 24, which asked: "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?" was also reasonable. Although applicant was intoxicated at the time he engaged in the conduct that led to the charges of Domestic Disturbance, Assault, Assault on a Child Under 16 Years of Age, and Child Mistreatment, it is not unreasonable to construe this question to refer to charges with an explicit alcohol or drug connection such as DUI or Possession of an Illegal Substance. I therefore find that applicant did not intentionally falsify his response to Question 24.

Applicant's "no" responses to Questions 25 and 26 were false because during the previous seven years he clearly had been (1) subjected to disciplinary proceedings under the UCMJ, and (2) charged with two offenses (Assault on a Child Under 16 Years of Age and Child Mistreatment) that he did not disclose in response to Questions 21 through 25 on the SCA. Applicant's "no" response to Question 30 was also false since he had clearly received alcohol counseling during the previous seven years. Lastly, applicant's "no" response to Question 34 was false since his wages had been garnished during the previous seven years. Having been offered no reasonable explanation for applicant's incorrect responses to these four relatively straightforward questions, I find that applicant intentionally provided the false information. ⁽¹⁾

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into Disqualifying Factors and Mitigating Factors) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

Personal Conduct

Disqualifying Factors

1. E2.A5.1.2.2: The deliberate omission of relevant and material facts from any personnel security questionnaire.

Mitigating Factors

None.

Alcohol Consumption

Disqualifying Conditions:

1. E2.A7.1.2.1: Alcohol-related incidents away from work.
2. E2.A7.1.2.5: Habitual or binge consumption of alcohol to the point of impaired judgment.

Mitigating Conditions:

1. E2.A7.1.3.2: The problem occurred a number of years ago and there is no indication of a recent problem.
2. E2.A7.1.3.3: Positive changes in behavior supportive of sobriety.

Criminal Conduct

Disqualifying Factors

1. E2.A10.1.2.2: A single serious crime or multiple lessor offenses.

Mitigating Factors

None.

CONCLUSIONS

With respect to Guideline G, in his response to the SOR, applicant admitted that he consumed alcohol, at times to excess and to the point of intoxication, from about 1975 to at least April 2000, and that he continues to consume alcohol. Despite these admissions, there is no evidence that applicant has abused alcohol since 1994. According to applicant, the 1994 incident when he "disciplined" his sons was the wake up call he needed, and with the assistance of the Army, he received the help he "needed so badly" (Exhibit 5). Although he still consumes alcohol, he limits himself to one or two beers a month, and in his words, "I do not intend to develop an alcohol problem again" (Exhibit 5). Given the passage of time since applicant last abused alcohol, and his commitment to avoiding a recurrence of his past alcohol abuse, Guideline G is found for applicant.

With respect to Guidelines E and J, the evidence establishes that applicant intentionally provided false material information to the Government in response to four questions on the SCA he executed in October 1997. The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, it is extremely difficult to conclude that he or she nevertheless possesses the judgment, reliability and trustworthiness required of clearance holders. In this case, although applicant's falsifications of his SCA occurred five years ago, his failure to offer any independent evidence indicating that he has reformed and is now reliable and trustworthy, precludes a finding that it is now clearly consistent with the national interest to grant him access to classified information.

FORMAL FINDINGS

Guideline E: AGAINST THE APPLICANT

Guideline G: FOR THE APPLICANT

Guideline J: AGAINST THE APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for applicant.

Joseph Testan

Administrative Judge

1. Applicant's intentional falsification of material facts constitutes criminal conduct under 18 U.S.C. 1001.